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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2002-1499

CANDICE LYNN SPICER
7547 Golondrina Drive
San Bernardino, CA 92410

ACCUSATION

Vocational Nurse License No. VN 193360

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).
2. On or about October 30, 2000, the Board issued Vocational Nurse License No. VN 193360 to Candice Lynn Spicer (Respondent). The Vocational Nurse License expired on May 31, 2006.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All Section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 477 of the Code states, in pertinent part, that "Board" includes "Board," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

6. Section 490 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

8. Section 493 states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or

1 revoke a license or otherwise take disciplinary action against a person who holds a license, upon
2 the ground that the applicant or the licensee has been convicted of a crime substantially related to
3 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
4 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
5 and the board may inquire into the circumstances surrounding the commission of the crime in
6 order to fix the degree of discipline or to determine if the conviction is substantially related to the
7 qualifications, functions, and duties of the licensee in question.

8 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
9 'registration.'"

10 9. Section 2875 provides, in pertinent part, that the Board may discipline the
11 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
12 Section 2875) of the Vocational Nursing Practice Act.

13 10. Section 2878 states, in pertinent part:

14 "The Board may suspend or revoke a license issued under this chapter [the
15 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17

18 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
19 abetting the violating of, or conspiring to violate any provision or term of this chapter.

20

21 "(f) Conviction of a crime substantially related to the qualifications, functions,
22 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
23 conclusive evidence of the conviction.

24

25 "(j) The commission of any act involving dishonesty, when that action is related
26 to the duties and functions of the licensee. . . ."

27 11. Section 2878.5 states, in pertinent part:

28 In addition to other acts constituting unprofessional conduct within the meaning

1 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
2 licensed under this chapter to do any of the following:

3 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
4 licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or
5 administer to another, any controlled substance as defined in Division 10 of the Health and
6 Safety Code, or any dangerous drug as defined in Section 4022.

7 "(b) Use any controlled substance as defined in Division 10 of the Health and
8 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
9 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
10 or to the extent that the use impairs his or her ability to conduct with safety to the public the
11 practice authorized by his or her license.

12

13 "(d) Be committed or confined by a court of competent jurisdiction for
14 intemperate use of or addiction to the use of any of the substances described in subdivisions (a)
15 and (b) of this section, in which event the court order of commitment or confinement is prima
16 facie evidence of that commitment or confinement. . . ."

17 12. Section 2878.6 states:

18 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
19 made to a charge substantially related to the qualifications, functions and duties of a licensed
20 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
21 order the license suspended or revoked, or may decline to issue a license, when the time for
22 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
23 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
24 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
25 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
26 dismissing the accusation, information or indictment."

27 13. Section 4022 prohibits the dispensing or furnishing of a dangerous drug or
28 dangerous device, which is any drug or device that is unsafe for self-use in humans or animals,

1 without a prescription or as legally authorized.

2 14. California Code of Regulations, title 16, section 2521 states, in pertinent
3 part:

4 "For the purposes of denial, suspension, or revocation of a license pursuant to
5 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
6 act shall be considered to be substantially related to the qualifications, functions or duties of a
7 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
8 licensed vocational nurse to perform the functions authorized by his license in a manner
9 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
10 limited to those involving the following:

11

12 "(c) Violating or attempting to violate, directly or indirectly, or assisting in or
13 abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2
14 of the Business and Professions Code.

15

16 "(f) Any crime or act involving the sale, gift, administration, or furnishing of
17 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business
18 and Professions Code."

19 15. Section 125.3 provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations
21 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

24 16. Clindamycin, a prescription drug, is a lincomycin antibiotic used to treat
25 bacterial infections, and is categorized as a dangerous drug pursuant to Business and Professions
26 Code section 4022.

27 17. Lidocaine is a local anesthetic that works by causing temporary
28 numbness/loss of feeling in the skin and mucous membranes. It is categorized as a dangerous

1 drug pursuant to Business and Professions Code section 4022.

2 18. Methamphetamine, a CNS stimulant, is a Schedule II controlled substance
3 as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as
4 a dangerous drug pursuant to Business and Professions Code section 4022. (CNS, abbreviation
5 for central nervous system.)

6 19. Morphine Sulfate, the narcotic substance is a preparation of Morphine, the
7 principal alkaloid of opium. It is classified as a Schedule II controlled substance as designated by
8 Health and Safety Code section 11055, subdivisions (b)(1)(M) and (b)(2). It is categorized as a
9 dangerous drug pursuant to Business and Professions Code section 4022.

10 FIRST CAUSE FOR DISCIPLINE

11 (Convictions of Substantially Related Crimes)

12 20. Respondent is subject to disciplinary action under Sections 490 and 2878,
13 subdivision (f), as defined in California Code of Regulations, title 16, section 2521, in that on or
14 about May 14, 2008, and on or about February 20, 2003, Respondent was convicted of crimes
15 substantially related to the qualifications, functions or duties of a licensed vocational nurse which
16 to a substantial degree evidence her present or potential unfitness as a licensed vocational nurse
17 to perform the functions authorized by her license in a manner consistent with the public health,
18 safety, or welfare. The convictions are as follows:

19 a. On or about May 14, 2008, in a criminal proceeding entitled *The People of*
20 *the State of California v. Candice Lynn Spicer* in San Bernardino County Superior Court, Rancho
21 Cucamonga Court, Case No. FWV800393, Respondent was convicted for violating Penal Code
22 section 475(c) (pass completed check/etc. to defraud), a misdemeanor. The Court ordered
23 Respondent to two (2) years probation, 90 days jail, and pay restitution and fines.

24 b. The circumstances of the conviction are that on or about November 14,
25 2007, San Bernardino County Sheriff's Department, West Valley Detention Center, Support
26 Services officers received a fraudulent money order in the about of \$750 made payable to an
27 inmate, Respondent's boyfriend, sent by Respondent via U.S. Postal Service mail.

28 c. On or about February 20, 2003, in a criminal proceeding entitled *The*

1 *People of the State of California v. Candice Spicer* in San Bernardino County Superior Court,
2 San Bernardino District, Case No. FSB038052, Respondent was convicted on her plea of *guilty*
3 to violating Penal Code section 470 (forgery of a driver's license with intent to defraud), a
4 misdemeanor. The Court ordered Respondent to three (3) years probation, 90 days jail, and pay
5 restitution.

6 d. The circumstances of the conviction are that on or about February 5, 2003,
7 San Bernardino Police Department officers, working an identity theft investigation, served a
8 warrant on Respondent's residence. The officers found and booked into evidence five stolen
9 blank checks, numbered 2030, 2032, 2039 and 2045, from a victim Maria Lopez Zable, and a
10 counterfeit California Department of Motor Vehicle driver's license bearing Respondent's picture
11 in the name of Maria Lopez Zable. Respondent was arrested. Subsequently, victim Maria Lopez
12 Zable confirmed with the officers that the drivers license presented with Respondent's picture
13 was not hers as it did not bear her driver's license number, picture, and signature, and that the
14 blank checks were stolen from her home's mail box.

15 SECOND CAUSE FOR DISCIPLINE

16 (Dangerous Use of Controlled Substances/Dangerous Drugs)

17 21. Respondent is subject to disciplinary action under Section 2878,
18 subdivision (a), in conjunction with Sections 2878.5, subdivision (b), and 492, on the grounds of
19 unprofessional conduct, in that Respondent used controlled substances and dangerous drugs,
20 without valid prescriptions, substantially related acts, to an extent or in a manner dangerous or
21 injurious to herself, any other person, or the public, and in such a way that the use impairs her
22 ability to conduct with safety to the public the practice authorized by her license, as follows:

23 a. On or about February 26, 2007, in a criminal proceeding entitled *The*
24 *People of the State of California v. Candice Lynn Spicer* in San Bernardino County Superior
25 Court, San Bernardino District, Case No. TSB120599, Respondent negotiated a PC1000/Drug
26 Court Plea Bargain agreement with a *plea of guilty* to violating two (2) misdemeanor counts of
27 Health and Safety Code sections 11550(a) (under the influence of a controlled substance), and
28 11377 (possession of a controlled substance, to wit, morphine). The Court ordered Respondent's

1 plea agreement filed, a plea of guilty entered, Respondent to attend a Drug Diversion Program;
2 Judgment was deferred and pronouncement of sentence was also deferred for a period of 18
3 months for Respondent to provide proof of successful completion of the court ordered Drug
4 Program with no violations, by August 8, 2008. Respondent filed proof of successful completion
5 of the court ordered Drug Diversion Program with the court..

6 b. The circumstances of the criminal acts are that on or about May 2, 2006,
7 San Bernardino Sheriff's Department officers completed a routine traffic stop of Respondent's
8 vehicle and, subsequent to the driver being arrested for driving with a suspended license,
9 Respondent was arrested for various violations.

10 (1) Respondent informed the officers that her vehicle did not have a valid
11 registration card, nor a proof of insurance.

12 (2) The officers identified a DMV temporary registration card posted on
13 Respondent's vehicle's rear window which was verified to have different numbers than the
14 vehicle's VIN, to wit, false evidence of registration.

15 (3) During an inventory search of Respondent's vehicle and her purse, the
16 officers found prescription medications:

17 (a) a glass bottle of lidocaine, a dangerous drug;

18 (b) 124 capsules of clindamycin, a dangerous drug; and

19 (c) five (5), 30mg pills of morphine, a controlled substance and dangerous
20 drug.

21 (4) Respondent informed the officers that she was employed as a licensed
22 vocational nurse and that the prescription medications, lidocaine, clindamycin and morphine,
23 were diverted from her work, Maxim Medical Services, Riverside.

24 (5) Respondent informed the officers that she used the lidocaine on her
25 boyfriend's thumb a month previous.

26 (6) Exhibiting signs of being under the influence of a CNS stimulant, without
27 a valid prescription, Respondent failed field sobriety tests.

28 (7) Respondent admitted to the officers that the week before, she "slammed"

1 (injected) methamphetamine, a controlled substance, into her vein.

2 (8) Respondent tested positive for amphetamines (methamphetamine) and
3 opiates (morphine), controlled substances and dangerous drugs.

4 THIRD CAUSE FOR DISCIPLINE

5 (Unlawful Possession of Controlled Substances)

6 22. Respondent is subject to disciplinary action under Section 2878,
7 subdivision (a), in conjunction with Sections 2878.5, subdivision (a), and 492, on the grounds of
8 unprofessional conduct, in that Respondent obtained and/or possessed controlled substances and
9 dangerous drugs, morphine and methamphetamine, without a prescription, acts substantially
10 related to the qualifications, functions and duties of a licensed vocational nurse. Complainant
11 refers to, and by this reference incorporates, the allegations set forth in paragraphs 21(a)(b)(1)-
12 (8), inclusive, above, as though set forth fully.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Commitment for Intemperate Use)

15 23. Respondent is subject to disciplinary action under Section 2878,
16 subdivision (a), in conjunction with Sections 2878.5, subdivision (d), and 492, on the grounds of
17 unprofessional conduct, in that Respondent was committed by a court of competent jurisdiction
18 for intemperate use of controlled substances and dangerous drugs. Complainant refers to, and by
19 this reference incorporates, the allegations set forth in paragraphs 21(a)(b)(1)-(8), and 22,
20 inclusive, above, as though set forth fully.

21 FIFTH CAUSE FOR DISCIPLINE

22 (Dishonest Acts)

23 24. Respondent is subject to disciplinary action under Section 2878,
24 subdivision (j), in that Respondent committed dishonest acts which relate to the duties and
25 functions of her license. Complainant refers to, and by this reference incorporates, the
26 allegations set forth in paragraphs 20(a)-(d), 21(a)(b)(1)-(8), and 22, inclusive, above, as though
27 set forth fully.

28 ///

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 25. Respondent is subject to disciplinary action under Section 2878,
4 subdivisions (a) and (d), in that Respondent committed acts of unprofessional conduct.
5 Complainant refers to, and by this reference incorporates, the allegations set forth in
6 paragraphs 20-24, inclusive, above, as though set forth fully.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
10 Technicians issue a decision:

11 1. Revoking or suspending Vocational Nurse License No. VN 193360, issued
12 to Candice Lynn Spicer.

13 2. Ordering Candice Lynn Spicer to pay the Board of Vocational Nursing and
14 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: January 22, 2009

19
20 

21 TERESA BELLO-JONES, J.D., M.S.N., R.N.

22 Executive Officer

23 Board of Vocational Nursing and Psychiatric Technicians

24 Department of Consumer Affairs

25 State of California

26 Complainant